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ALIEN LAWYERS IN THE UNITED STATES AND JAPAN—A COMPARATIVE STUDY

KANAME OHIRA* AND GEORGE NEFF STEVENS**

The steadily increasing economic and social contacts between Japan and the United States are illustrative of a development which has brought lawyers and laymen of all countries face to face with the need for more adequate, and accurate, information about the laws of all countries.¹ Since the lawyer is the fount to which the informed layman turns for legal advice, it would seem quite natural for such a layman, faced with a problem involving foreign law, either to seek advice from his own attorney, or to turn to an alien admitted to the bar of the country, the laws of which are involved. It is the purpose of this paper, as an illustration of present and as a suggestion for future treatment, to examine and discuss the availability of the alien lawyer to such a client. Common sense would indicate that a properly licensed resident alien lawyer would be the most direct, effective, and satisfactory source of such information and advice.²

Although the emphasis of this paper is on the alien attorney, a comment on the alien as an applicant for admission to the bar is in order. In both the United States and Japan the normal and usual road of the neophyte to admission to the bar is by way of the successful passage of a bar examination.³ However, the alien applicant, in addition to the requirements demanded of all applicants, encounters the hurdle, or barrier, of citizenship.

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¹ See, for example, Henderson, *The Roles of Lawyers in U.S.-Japanese Business Transactions*, 38 WASH. L. REV. 1 (1963). The lawyer with clients doing business abroad, and especially in Japan, should be on the look-out for LEGAL PROBLEMS OF FOREIGN INVESTMENT IN JAPAN to be published in early 1965 under the auspices of the American Society of International Law. The lawyer will find Chapter IV, entitled *The Legal Environment for Foreign Investment* by Professor Henderson of particular interest and value.

² Such a proposal was made by the New York County Lawyers Association many years ago. See, 43 REPORT OF THE NEW YORK STATE BAR ASSOCIATION 293-294 (1920). More recent recognition of the need is reported in THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, YEAR BOOK 256 (1957).

³ For a detailed comparison and analysis of the rules and regulations with respect to admission to the bar, see Ohira & Stevens, *Admission to the Bar, Disbarment and Disqualification of Lawyers in Japan and the United States—A Comparative Study*, 38 WASH. L. REV. 22 (1963).

In the United States, United States citizenship is a specific requirement for admission to the bar in thirty-seven states,⁴ the District of

⁴*Alabama*, RULES GOVERNING ADMISSION TO THE BAR OF ALA., R. IV (A); *Alaska*, Sess. Laws 1955, ch. 196, § 9, and ALASKA RULES FOR ADMISSION TO PRACTICE adopted by the Board of Governors of the Alaska Bar Association, R. 1; *Arizona*, RULES PERTAINING TO ADMISSION OF APPLICANTS TO THE STATE BAR OF ARIZ., R. III A 1; *California*, RULES REGULATING ADMISSION TO PRACTICE LAW IN CALIF., R. III, § 31 (8), and a letter from the Secretary of the Committee of Bar Examiners: "An alien may apply for and take our bar examination (if otherwise qualified) or our attorney's examination (if qualified) but if he is successful in the examination, he may not be admitted to practice until he has become a citizen."; *Colorado*, RULES GOVERNING ADMISSION TO THE BAR, ch. XIX, R. 204; *Connecticut*, RULES OF THE SUPER. CT. AND REGULATIONS OF THE STATE EXAMINING COMMITTEE REGULATING ADMISSION TO THE BAR, § 4. 1st; *Delaware*, DEL. SUP. CT. R. 31 (1) (A) (c); *Florida*, RULES OF THE SUP. CT. OF FLA. RELATING TO ADMISSIONS TO THE BAR, art. III, § 19; *Hawaii*, HAWAII SUP. CT. R. 15(a); *Idaho*, RULES OF THE SUP. CT. AND THE BOARD OF COMMISSIONERS OF THE IDAHO STATE BAR GOVERNING ADMISSION TO PRACTICE LAW, R. 103 (A); *Illinois*, RULES GOVERNING ADMISSION TO THE BAR OF ILL., AS ADOPTED BY THE SUP. CT. OF ILL., R. 58, § 1; The Secretary of the Ill. State Bd. of Law Examiners indicated by letter: "We allow applicants to take Bar Examinations prior to becoming citizens, however."; *Iowa*, RULES OF THE IOWA SUP. CT. GOVERNING ADMISSION TO THE BAR, R. 101; *Kansas*, KAN. SUP. CT. R. 35; *Kentucky*, RULES OF THE CT. OF APP. OF KY. RELATING TO THE ADMISSION OF PERSONS TO PRACTICE LAW, R. 2.010; *Louisiana*, RULES FOR THE ADMISSION TO THE PRACTICE OF LAW IN LA., APPLICATION TO TAKE BAR EXAMINATION; *Maine*, ME. REV. STAT. ch. 105, § 3 (1954); *Michigan*, RULES GOVERNING ADMISSION TO THE BAR IN THE STATE OF MICHIGAN, R. 2(a); *Minnesota*, RULES OF THE SUP. CT. FOR ADMISSION TO THE BAR, R. II; *Mississippi*, MISS. CODE ANN., t. 32, ch. 2, § 8654 (1956); *Missouri*, SUP. CT. RULES GOVERNING ADMISSION TO THE BAR, R. 8.05; The Secretary of the State Bd. of Law Examiners indicated: "On one or two occasions we have permitted someone who has already started naturalization to take the examination, with results held up until he becomes a citizen."; *Montana*, RULES OF THE SUP. CT. WITH RELATION TO ADMISSION OF ATTORNEYS, R. XXV, A 1, but see MONT. REV. CODE, § 93-2001 (1947), which permits an alien who has declared his intentions of becoming a citizen of the United States to become a lawyer. The Sup. Ct. Rule was adopted after the statute; *Nebraska*, NEB. SUP. CT. REV. R., Admission of Attorneys II, 2; *Nevada*, RULES OF THE SUP. CT. RELATING TO GOVERNMENT OF THE LEGAL PROFESSION, R. 43, 1 (a); *New Hampshire*, RULES OF THE SUP. CT., ADMISSION TO THE BAR, R. 15; *New Jersey*, N.J. SUP. CT. R. 1:20-1 (c); *New Mexico*, RULES GOVERNING BAR EXAMINERS, BAR EXAMINATIONS, AND ADMISSIONS TO THE BAR, R. II A 8; *New York*, RULES OF THE CT. OF APP. FOR THE ADMISSION OF ATTORNEYS AND COUNSELLORS-AT-LAW, R. II-1 c; Letter from John T. De Graff, President, State Board of Law Examiners, indicated: "However, aliens are sometimes admitted to the examination on order of the Court of Appeals with the proviso that they will not be certified to the appellate division until proof of citizenship has been filed with our board."; *North Carolina*, RULES GOVERNING ADMISSION TO THE PRACTICE OF LAW, R. 4; *Ohio*, SUP. CT. RULES FOR ADMISSION TO THE PRACTICE OF LAW, R. § 1 (a); The Clerk of the Sup. Ct. of Ohio Bd. of Bar Examiners indicated: "They can apply for registration as a candidate for admission but cannot be admitted until naturalized."; *Pennsylvania*, RULES OF THE SUP. CT. HAVING REFERENCE TO ADMISSION TO THE BAR, R. 13; The Secretary of the State Bd. of Law Examiners in Pa. wrote as follows: "Resident aliens may apply for admission but must comply with the rules of the Supreme Court of Pennsylvania as to qualifications, i.e., graduation from an approved undergraduate college and graduation from an approved law school, or be specially passed on by the State Board of Law Examiners; and must be citizens of the United States and residents of Pennsylvania at the time of their admission to the Bar."; *Rhode Island*, R.I. SUP. CT. R. 1A, 1st; *South Carolina*, RULES FOR THE EXAMINATION AND ADMISSION OF PERSONS TO PRACTICE LAW, R. 5 (1); *South Dakota*, SUP. CT. RULES FOR ADMISSION TO PRACTICE, R. 4, Order No. 1 (1957); *Texas*, SUP. CT. RULES GOVERNING ADMISSION TO THE BAR, R. II; *Utah*, REV. RULES OF THE UTAH STATE BAR FOR ADMISSION TO THE BAR (adopted 1935 with amendments through 1961), R. III, § 3-1 3; *Washington*, RULES FOR

Columbia,⁵ Guam⁶ and Puerto Rico.⁷ Although there is, apparently, no specific requirement in six additional states, letters from admitting authorities in those states indicate that United States citizenship is in fact a condition of admission.⁸

In only five states has the question of the admission of aliens been given specific consideration. Thus, by statute or rule aliens who have declared their intention of becoming citizens of the United States are eligible for admission to the bar in five states.⁹ However, admission

ADMISSION TO PRACTICE, ADOPTED BY THE Bd. OF GOVERNORS OF THE WASH. STATE BAR ASSOCIATION AND APPROVED BY THE SUP. CT., R. 2 B 2; *Wisconsin*, WIS. STAT. § 256.28 (1) and RULES RELATING TO THE BOARD OF STATE BAR COMMISSIONERS FOR WISCONSIN AND TO THE EXAMINATION OF APPLICANTS FOR ADMISSION TO THE BAR, ADOPTED BY THE WIS. SUP. CT. (1960), BAR 1.03 (2); *Wyoming*, WYO. SUP. CT. R. 21 (a) (1) a.

Hereinafter rules and statutes will, in most instances, be cited by state and number of the rule (R.) or statute only.

⁵ D.D.C., COMMITTEE ON ADMISSIONS AND GRIEVANCES, INFORMATION FOR APPLICANTS FOR DISTRICT OF COLUMBIA BAR EXAMINATION, under "Procedure." In a letter from Melvin J. Marques, 11 Sept. 1963, the Administrative Assistant to the Chief Judge of the U.S. District Court for the District of Columbia stated: "Aliens may not be admitted to practice before this Court, whether resident or non-resident,.... This is necessarily so since the statute (§11-130, D. C. Code, 1961 Ed.) requires the applicant to take and subscribe an oath to support the Constitution of the United States."

⁶ RULES AND REGULATIONS FOR ADMISSION TO THE PRACTICE OF LAW IN GUAM, § 5 (1), in accordance with D. GUAM R. 3(b) and GOVERNMENT CODE tit. XXIX.

⁷ P.R. SUP. CT. R. 8. Admissions to the Bar, (a) (1), (Nov. 30, 1962).

⁸ *Arkansas*, letter from the Secretary, Bd. of Law Examiners: "If they have applied for citizenship, they may take the exam but will not be licensed until after they are granted citizenship."; *Indiana*, see RULES OF THE SUP. CT. FOR ADMISSION TO THE BAR AND CONCERNING ATTORNEYS, R. 3-13 A, "a resident voter of the state of Indiana"; and R. 3-20, Oath of Attorney, which requires each applicant to swear that he will support the Constitution of the United States; *Maryland*, RULES GOVERNING REGISTRATION OF LAW STUDENTS AND ADMISSION TO THE BAR OF MD., adopted by the CT. APP. (1955 as amended 1958), R. 2d (1) "every such applicant shall be under oath and...if said applicant was not born in the United States, shall state whether the applicant or the applicant's parents, or either of them, have been naturalized in the United States, and, if so, the court and the date of such naturalization..."; see also, R. Second (2); the Secretary of the Md. State Bd. of Law Examiners in answer to the question as to whether the Maryland rules permit resident aliens to apply for admission to the Bar stated in his letter of 14 June 1963: "Yes. On condition that the alien, if successful on the bar examination, becomes a citizen of the United States before admission to the Bar."; *North Dakota*, see N.D. CENTURY CODE § 27-11-03 (1961); the Secretary of the State Bar Board, July 23, 1963, writes: "while the statute does not mention the matter of citizenship, our court has in the past refused to admit non-citizens....Our constitution provides that applicants for admission shall take the oath not only to support the Constitution of North Dakota, but also the Constitution of the United States. On that basis our court has always required citizenship."; *Vermont*, RULES FOR ADMISSION OF ATTORNEYS, R. 23-1: "Each applicant for admission...must be a citizen of the state,..."; The chairman of the Bd. of Bar Examiners indicated that the Vt. rule did not permit resident aliens to apply for admission to the Bar; *West Virginia*, W. VA. OFFICIAL CODE ANN., ch. 30, art. 2, § 28-50 (1) (1955); a letter from the Assistant Secretary of the Bd. of Law Examiners of W.V., however, has indicated that an alien is not eligible for admission to the bar in West Virginia.

⁹ *Georgia*, GA. CODE ANN., § 9-104 (1959). RULES FOR ADMISSION TO THE BAR adopted by the Sup. Ct. in 1952 as amended in 1959, R. 4 (b); *Massachusetts*, INFORMATION RELATING TO ATTORNEYS, Gen. R. 1 (1), 1 (2); *Montana*, MONT. REV. CODE,

will not be granted in two of these states until citizenship is in fact achieved,¹⁰ and will be void in another if the attorney fails to become a United States citizen within six months after he is eligible.¹¹

In only two states is a resident alien permitted to become a member of the bar even though he has indicated no intention of becoming a United States citizen.¹²

Prior to 1949 Japanese law required lawyers to be Japanese nationals.¹³ In that year the ban on aliens was removed by an amendment to the Lawyers Law which eliminated this requirement.¹⁴ As a result, any foreign national may, in theory, become a practicing lawyer in Japan by complying with rules which govern the Japanese aspirant.¹⁵ And, in fact, there are some lawyers of foreign nationality practicing law just as lawyers of Japanese nationality, before all courts, involving all kinds of legal problems.¹⁶

In practice, however, the road to the bar in Japan which the foreign

§ 93-2001 (1947), and RULES OF THE SUP. CT. WITH RELATION TO ADMISSION OF ATTORNEYS, R. XV A 1; *Oklahoma*, RULES AND REG. GOVERNING ADMISSION TO THE PRACTICE OF LAW IN THE STATE OF OKLA., R. 1, § 1; *Oregon*, ORE. REV. STAT. § 9.230.

¹⁰ *Massachusetts*, Gen. R. 1 (2); *Montana*, R. XXV A 1.

¹¹ *Oregon*, ORE. REV. STAT. § 9.230.

¹² *Tennessee*, letter from Charles L. Neely, Secretary, Bd. of Law Examiners, Aug. 14, 1963: "Under the present rules, this state permits resident aliens to apply for admission to the Bar. They must prove good moral character and must have had pre-legal education amounting to three years in attendance of law school and entitling a man to go into the senior class."; *Virginia*, letter from Howard G. Turner, Clerk, Sup. Ct. of App., July 31, 1963: "Yes, a resident alien is permitted to apply for admission to the bar in Virginia by meeting the same resident and law study requirements as natives."

It should be noted that both Tennessee and Virginia have statutes to the effect that no person shall practice as an attorney until he has taken an oath, in Tennessee by section 29-108 of the *Tenn. Code*, to support the Constitution of the state and of the United States, and in Virginia by section 54-43 of the *Va. Code*, to be faithful to the Commonwealth. Apparently the admitting authorities in both states have taken the position that successful alien applicants need not take that part of the oath; otherwise, admission of aliens who have not declared their intention to become U.S. citizens is impossible, as a practical matter, in these states along with the other forty-eight. If the supreme courts of Virginia and Tennessee have in fact waived, or intend to waive the oath requirements of these statutes to the extent indicated, there is ample authority for their right, and power, to do so. For a collection of cases, see: Annot., 144 A.L.R. 150, and for an excellent discussion of the issues, see, Degnan, *Admission to the Bar and the Separation of Powers*, 7 UTAH L. REV. 82 (1960). Additional support for Virginia's position may be found in the language of *Horne v. Bridwell*, 193 Va. 381, 68 S.E.2d 535 at 539 (1952): "... The qualification in court prescribed by section 54-43 is secondary to the qualifications in fact required by section 54-42. The procedure of 54-43 is the form required to establish the fact..." Being only form, the court certainly has the inherent power to find the fact of competency by means other than an oath of fidelity to Virginia.

¹³ Lawyers Law (*Bengoshihō*) art. 2 (Law No. 7, 1893) and Lawers Law (*Bengoshihō*) art. 2 (Law No. 53, 1933).

¹⁴ Lawyers Law (*Bengoshihō*) (Law No. 205, 1949).

¹⁵ For the details of these rules see Ohira & Stevens, *supra* note 3.

¹⁶ Almost all of them, however, are Koreans or Chinese (Formosan) who acquired the qualifications while they were Japanese nationals before the end of World War II.

national must travel is all but impossible of passage. As discussed in a previous article,¹⁷ there are three ways to admission to the bar in Japan. One is to complete a two-year term as a judicial apprentice after passing the national bar examination. The second is to hold a judgeship or certain other specified legal positions for defined periods and, excepting positions as a Supreme Court Justice, meeting in addition, all requirements for judicial apprenticeship. The third is to hold the position of professor or assistant professor of law at designated universities for a prescribed period. The first road is blocked by the policy of the Supreme Court of Japan to limit judicial apprenticeships to Japanese nationals.¹⁸ The second road is also closed by virtue of the fact that judgeships and other listed official legal positions are considered, understandably, to be posts which should be occupied by Japanese nationals. This leaves only the third road open to the alien aspirant. If he has the ability to obtain and maintain a position as an assistant professor of law in one of the accredited universities for the proper period of time, he will reach his goal.

It is, therefore, quite apparent that the alien, whether in the United States or Japan, has a very limited opportunity for full-fledged admission to the bar.

The individual who is already a member of the bar of some jurisdiction encounters a somewhat different problem. In this modern world, lawyers are faced with opportunities and responsibilities which, at an ever accelerating pace, require their services and presence for varying periods of time at points far away from the place of their admission to the bar. Because of the local nature of bar admission and because of the concern of the bar and the public with problems arising out of the unauthorized practice of law,¹⁹ this obligation to clients poses questions which can no longer be ignored or treated on a casual basis. The migrant lawyer of today is, more likely than not, a highly skilled and eminently respectable member of the bar, on the move because his clients' interests require it. Although a review of present restrictions on freedom of movement of attorneys within the

¹⁷ Ohira & Stevens, *supra* note 3.

¹⁸ For example, in the notice by the Supreme Court of Japan in the Official Gazette for the employment of judicial apprentices for 1964, nationality of Japan is listed as one of the requirements. See, Official Gazette No. 11028, 18 Sept. 1963, 21.

¹⁹ For detail, see the American Bar Foundation's publications: 1. UNAUTHORIZED PRACTICE SOURCE BOOK, Publication 1 (1958); 2. UNAUTHORIZED PRACTICE STATUTE BOOK, Publication II (1961); and 3. INFORMATIVE OPINIONS ISSUED BY THE COMMITTEE ON UNAUTHORIZED PRACTICE OF THE LAW, American Bar Association, Publication III (1960).

United States is clearly indicated, especially when compared with the freedom of movement of Japanese lawyers in Japan,²⁰ the treatment in this paper is limited to a discussion of present practices with respect to the admission of alien attorneys as general practitioners, or as counsel in a particular case (*pro hac vice*).

Prior admission to the bar of some jurisdiction is a requirement of admission to practice before the Supreme Court of the United States, in the United States Courts of Appeals for the eleven judicial circuits, and in the various United States District Courts (except the District of Columbia).²¹ Also, every state in the United States, recog-

²⁰ For the picture in the United States, see Dalton and Williamson, *State Barriers Against Migrant Lawyers*, 25 U. KAN. CITY L. REV. 144 (1957); Farley, *Admission of Attorneys from Other Jurisdictions*, 19 BAR EXAM. 227 (1950); and Martin v. Walton, 368 U.S. 25 (1961).

As for Japan, once registered, a lawyer may practice law before any court in Japan, from the Supreme Court down to any summary court in any location. For example, if he is a member of the bar association in Prefecture A (and, for comparison, a prefecture might be thought of as similar to a state), the attorney without changing his bar association membership may go before any court in Prefecture B or Prefecture C, or anywhere else. Not only is there no regulation which prohibits such movement, but also there is no requirement that he either reside or have an office in a Prefecture in order to practice in the courts of that Prefecture. It should, of course, be remembered that all Japanese courts are on a national level, but note and contrast the rules for admission to practice in the United States federal courts cited at notes 36-40 *infra*.

The Japanese attorney may change his membership from one local association to another. (There is one local association in each prefecture, except in Tokyo which has three, and in Hokkaido which has four.) To do this, he must file a request for change of registration with the Federation through the local association which he wants to join and, at the same time, report his request for a change of registration to the association of which he is presently a member. Lawyers Law, art. 10. He may change his membership to any local association in any part of Japan. The only restriction is this: A Japanese lawyer may have only one law office, which must be located in the prefectural area of the local bar association of which he is a member. Lawyers Law, art. 10. Therefore, if he changes his membership in a local bar association, he must also change the location of his law office. On the other hand, if an attorney wants to change the location of his law office into an area beyond the geographical boundaries of his local bar association, he must change his membership to the local bar association in the area of his proposed new location.

The request for a change of registration is usually accepted. The attorney is protected against the possibility of refusal by the same rules which govern the initial request for registration. Lawyers Law, arts. 12, 14, 15, and 16. For detail, see Ohira & Stevens, *supra* note 3, at 26-28.

To the critic who suggests that such freedom of movement creates no problem in Japan because all members of the Japanese bar have met the same requirements for admission whereas in the United States admission requirements vary from state to state, is not the solution readily available through the device of a national bar examination, as a means of assuring at least minimal standards, nation wide, for admission to practice anywhere and everywhere? For background on this proposal, see Clark, *Bar Examinations: Should They Be Nationally Administered?*, 36 A.B.A.J. 986 (1950); Brenner, Clark & Stevens, *Panel Discussion, A Uniform Bar Examination*, 22 BAR EXAM. 4 (1953); and Clark, DeGraff, Wilkerson, Elliott, Elwood, Stevens & Glenn, *Nationally Administered Bar Examinations*, 7 J. LEG. ED. 28 (1954).

²¹ See for example, BRENNER, BAR EXAMINATIONS AND REQUIREMENTS FOR ADMISSION TO THE BAR ch. 3 (1952). For detail, see the rules cited in notes 36-40 *infra*. For the District of Columbia exception, see D.D.C., INFORMATION FOR APPLICANTS FOR DISTRICT OF COLUMBIA BAR EXAMINATION.

nizing the fact that lawyers do migrate, has a provision dealing with the admission to its bar of persons who have been admitted to the bar of some other jurisdiction.²² Do these statutes, rules, and regulations provide for, or permit, the admission of attorney applicants who are aliens?

The United States citizenship requirement which frustrated the alien aspirant, as noted above, also bars the alien attorney from admission to practice, whether on motion or by examination, by specific provision to that effect in thirty-two states,²³ the District of Columbia,²⁴ Guam,²⁵ and Puerto Rico.²⁶ In ten additional states, although United States citizenship is not specifically mentioned in their statutes or rules, the alien lawyer will encounter a serious, if not insurmountable, barrier in the oath requirement,²⁷ or arising out

²² See BRENNER, BAR EXAMINATIONS AND REQUIREMENTS FOR ADMISSION TO THE BAR ch. 4 (1952), and the rules and statutes cited in notes 23-34 *infra*.

²³ *Alabama*, R. IV (A); *Alaska*, ALASKA STAT. §§ 8.08.130, 8.08.140 (1962) and R. 1, 2; *Arizona*, R. III, IV; *California*, R. IV, § 41 (6); *Colorado*, R. 204; *Connecticut*, § 8; *Florida*, art. III, § 19; *Hawaii*, R. 15 (a); *Idaho*, R. 103 (A), 110 (A); *Iowa*, R. 115, 101; *Kansas*, KAN. SUP. CT. R. 35 and R. VIII of the Bd. of Law Examiners; *Kentucky*, R. 2.110; *Louisiana*, letter from the Assistant Secretary of the Comm. on Bar Admissions, Aug. 14, 1963; *Massachusetts*, GEN. R., 1 (9); *Michigan*, R. 2(a); *Minnesota*, R. XI, II; *Missouri*, R. 8.10; *Nevada*, R. 43(2) (a); *New Hampshire*, R. 19; *New Jersey*, R. 1:20-2, 1:20-1; *New Mexico*, R. II A 8; *North Carolina*, R. 16, 4; *Ohio*, R. XIV, § 8 A (6); *Oklahoma*, R. 1, 2; *Rhode Island*, R. 1 A First and the "Provided" paragraph under R. 1 A; *South Carolina*, R. 10; *South Dakota*, S.D. CODE §§ 32.1105, 32.1104 (1939), as amended, and S.D. SUP. CT. R. 4, 5, respectively; *Texas*, R. X; *Utah*, R. IV, § 4-1 3; *West Virginia*, W. VA. CODE CH. 30 § 2851 (1961) and ORDER OF THE SUP. CT. II (A) (1); *Wisconsin*, § 256.28 (3); *Wyoming*, R. 21 (a) (1) a, and R. 21 (d). For a collection of cases supporting the constitutionality of this requirement see 39 A.L.R. 346 at 349.

²⁴ *District of Columbia*, D.C. CODE § 11-1301 (1961). The Secretary of the D.C. Comm. on Admissions and Grievances in a letter, July 8, 1963, wrote: "No provision is made for the admission on motion of aliens on the basis of membership in the bar of their own country." A letter from Melvin J. Marques, Administrative Assistant to the Chief Judge of the U.S. District Court for the District of Columbia, Sept. 11, 1963, stated: "Aliens may not be admitted to practice before this court, whether resident or nonresident, and regardless of whether they might have been admitted to practice. This is necessarily so since the statute (Section 11-1301, D.C. Code, 1961) requires the applicant to take and subscribe an oath to support the Constitution of the United States." *Quaere* as to the validity of this statute if applied to a Japanese attorney applying for admission in the District of Columbia in light of the Treaty of Friendship, Commerce and Navigation with Japan, Art. VIII, set forth in text accompanying note 50 *infra*. Unless "saved" by the reference to the District of Columbia in the Japanese reservation (see text accompanying note 55 *infra*), the United States' reservation (see text accompanying note 51 *infra*) does not appear to permit the District of Columbia to exclude Japanese lawyers on grounds of alienage.

²⁵ RULES AND REG. FOR ADMISSION TO THE PRACTICE OF LAW, § 5 (1). See *quaere*, note 53 *infra*.

²⁶ R. 8 (a) (1), (3). See *quaere*, note 53 *infra*.

²⁷ *Delaware*, R. 31 (3), and see R. 31 (5) covering the Oath; *Georgia*, GA. CODE ANN. § 9-201, and see the Oath Requirement of § 9-115; *Nebraska*, R. II, 5, and see Oath Requirement, R. II, 10; *North Dakota*, §§ 27-11-25, 27-11-26, and see Oath Requirement set forth in the North Dakota Constitution, § 211; *Virginia*, R. 1.5, which includes the Oath Requirement in the last paragraph.

of interpretations of the lawyer-admission regulations by the admitting authority which have resulted in the incorporation of the United States citizenship requirement into their rules.²⁸

The question of the admissibility of attorneys who are members of the bar of foreign countries has been given express consideration in only eight states.²⁹ In this group persons who have been admitted to the practice of law in the highest court of a foreign country where the common law of England constitutes the basis of its jurisprudence are eligible for admission as attorney applicants in six states,³⁰ provided such attorneys have declared their intention to become and in due course become,³¹ or became, or are, United States citizens by or before the time of their application.³² While these provisions are of no use to the alien lawyer who does not wish to become a United States citizen, they do offer a possible, if limited, source of foreign legal lore by way of the admission of those who see fit to change their citizenship.

In only two states is there a provision which would permit an alien lawyer to become a member of the bar as a lawyer applicant without surrendering his native citizenship. In one of these states, an alien who is a member of the bar of another state of the United States or of the District of Columbia may be admitted on motion,³³ and in the other

²⁸ *Arkansas*, the "Substantially Equivalent" requirement of the RULES FOR ADMISSION UNDER RECIPROCITY WITHOUT EXAMINATION; *Maryland*, R. Fourteenth; although United States citizenship is not specifically mentioned, the Secretary of the Maryland State Board of Law Examiners wrote, 13 June 1963: "No declaration of intention to become a United States citizen is required but United States citizenship is required before admission to the bar, if successful in the bar examination."; *Mississippi*, in the "Other Requirements" provision of MISS. CODE ANN. § 8660 when read along with §§ 8649, 8654; *Pennsylvania*, in the "General Qualifications" requirements of the Attorney Admission Rule, R. 12 A and B; the Secretary of the Pa. State Board of Law Examiners wrote: "... residence within the state of Pennsylvania and the perfection of United States citizenship are both required before an applicant can be admitted to the bar of Pennsylvania."; *Vermont*, in the "Citizen of this State" requirement of R. 27, if state citizenship includes U.S. citizenship.

²⁹ *Illinois*, *Indiana*, *Maine*, *Montana*, *New York*, *Oregon*, *Tennessee*, and *Washington*.

³⁰ *Illinois*, R. 58, § 3 (1); *Indiana*, R. 3-5; *Montana*, MONT. REV. CODES § 93-2005 (1947); *New York*, VII-1 a; *Oregon*, R. F. (2); *Washington*, R. 2 A (3), 3 A (1), and 3 B (7).

³¹ *Oregon*, R. F. (1) and ORE. REV. STAT. § 9.230 (1953).

³² *Illinois*, R. 58, §§ V 2, 1; *Indiana*, R. 3-5 g; *Montana*, § 93-2005 and R. XXV A 1; *New York*, R. VII-1 c; *Washington*, R. 2 C, 2 B (2), 3 A (1), and 3 B (1).

³³ *Maine*, ME. REV. STAT. ch. 105 § 2 (1954); the Secretary of the Board of Bar Examiners in *Maine* wrote, 13 June 1963: "Aliens may be admitted on motion if members of the bar of another state or the District of Columbia in active practice there for three years." The potential of this rule is, of course, very limited. As indicated in the text accompanying note 12, *supra*, only *Tennessee* and *Virginia* permit resident aliens to become members of their state bar. As indicated in the text accompanying note 5, *supra*, the District of Columbia has a specific requirement of U.S. citizenship.

an applicant for admission to the bar upon a license from a foreign country is eligible without regard to United States citizenship.³⁴

To summarize, in only three states of the United States is it possible for an alien, either as a newly admitted attorney or as a successful attorney applicant, to practice law as a resident alien.³⁵ But it is important to note that the experiment has been made, and that it has, apparently, caused no problems. Leaders of the bar in other states would do well to give thought to what these states have done.

One might suppose that the alien attorney would find a more friendly attitude in the federal courts, but such is not the case. The alien who is a member of the bar of his native land or of some other foreign country simply is not eligible, as a lawyer applicant, for admission to the bar of the United States Supreme Court, or to the bar of any United States Court of Appeals, or to the bar of any United States District Court. While a specific requirement of United States citizenship blocks admission in only four federal courts,³⁶ a requirement, in one form or another, limiting admission to attorneys who have been admitted to practice in the highest court of a state of the United States,³⁷ or a territory of the United States,³⁸ or in a United States

³⁴ *Tennessee*, R. 8; and a letter from Charles L. Neely, Secretary of the Tenn. Bd. of Law Examiners, Aug. 14, 1963, states: "Under our rules, aliens can practice law in this state and are given a license as stated above. There must be before the license is given, a residence within the state or a declared intention to reside in the state of Tennessee. As the rule now stands the person requesting the admission has always expressed his intention to become a resident citizen of the United States." TENN. CODE ANN. § 29-105 provides that, "The Supreme Court may make such provisions, rules and regulations as it may deem proper for the admission of persons who have been licensed to practice law in other states or countries." This provision is certainly broad enough to permit the Supreme Court to waive the oath requirement of § 29-108 with respect to alien attorneys.

³⁵ Maine, Tennessee, and Virginia.

³⁶ D.C. CIR. R. 7 (a); 8TH CIR. R. (a); D. MD. R. 2; and W. D. VA. R. 1. Note that the alien lawyer who manages to gain admission in Virginia (see text accompanying note 35 *supra*) is not eligible for admission to the Federal District Court for the Western District of Virginia even though he is a member of the Virginia bar because he cannot meet the federal court's United States citizenship requirement. *Quaere* as to whether this requirement by this United States court under these circumstances is not in violation of the Treaty of Friendship, Commerce, and Navigation with Japan, referred to in the text at note 50 *infra*. It is submitted that it is, for the reservation referred to in the text at note 49 *infra* is for the protection of the state's rights, and the state (Virginia) in this instance has seen fit to admit aliens. A second, and different, *quaere*,—as to the meaning of the requirement in the District Courts of both the Western and the Southern Districts of Texas, both Rule 2 (b), which states that if not native born, the applicant is to give the date of his naturalization, if the applicant has been naturalized. Does this mean that if he has not been naturalized, he is not eligible for admission? If that is the intent, would not a requirement of United States citizenship at some specified time be more appropriate?

³⁷ The combinations are many. For example, the grounds for admission provide for admission to the particular federal court indicated below if the applicant is admitted to practice in:

1. The highest appellate court of any state in the United States—U.S. SUP. CT.

federal court³⁹ acts as an effective barrier to admission to the bar of the vast majority of United States courts. Even the alien attorney who has been admitted in one of the three states listed in note 35 *supra* is blocked by the additional requirement, found in the rules of every federal court examined, that before admission the applicant must take an oath (or make affirmation) that he will support the Constitution of the United States.⁴⁰

R. 5 1; D.C. CIR. R. 7; 1ST CIR. R. 7; 2ND CIR. R. 6; 3RD CIR. R. 8; 6TH CIR. R. 6 (1); 7TH CIR. R. 7(1); 8TH CIR. R. 6 (a); and 9TH CIR. R. 7.1; D. IDAHO R. 1 (a); S.D. IND. R. 1 (b); E.D. LA. R. 1 (b); D. MD. R. 2; D. MONT. R. 1 a; D.N.D. R. II 2; S.D. OHIO R. 3; N.D. OKLA., letter from Judge Barrow, 18 Sept. 1963; D.P. R. 1 (b); D.S.D. R. 1 § 1; and W.D. TEX. R. 2 (a).

2. The Supreme Court of any state in the Circuit—10TH CIR. R. 7.1.

3. The highest court of the state "to which they respectively belong"—2ND CIR. R. 6 (a).

4. The highest court of the state in which the attorney resides—4TH CIR. R. 6 (1); E.D. ILL. R. 1 (b); and S.D. TEX. R. 5 (a).

5. The state in which the United States District Court is located—D. ALASKA R. 1, amended, (a); D. ARIZ. R. 1; N.D. CAL. R. 1 (a); S.D. CAL., letter from Chief Judge Pearson M. Hall; D. COLO. R. 4 (b); D. CONN. R. 2 (a); D. DEL. R. 2 B; S.D. FLA. R. 16; N.D. FLA. R. 12; M.D. FLA. R. 16; N.D. GA. R. 1 (b); E.D. ILL. R. 1 (a); N.D. ILL. R. 6 (a); S.D. IOWA R. 1; N.D. IOWA R. 1; D. KAN. R. 3 (b); W.D. KY. R. 2 (a); E.D. LA. R. 1 (b); E.D. MICH. R. 1 (1); D. MINN. R. 2; S.D. MISS. R. 1; W.D. MO. R. 1 (a); E.D. MO. R. 11 (a) (1); D. MONT. R. 1 a; D.N. J. R. 2 B; D.N. M. R. 2 (a); N.D.N.Y. R. 2 (a), (b) and (c); S.D.N.Y. R. 2 (a); E.D.N.Y. R. 2 (a); M.D.N.C. R. 1 B; D. ORE. R. 4 (a); W.D. PA. R. 1 (b); E.D. PA., letter from Chief Judge Clary, 1 Oct. 1963; D.P. R. R. 1 (b); E.D.S.C. R. 2; W.D.S. C. R. 2; E.D. TENN. R. 1 (a); W.D. TEX. R. 2 (a); S.D. TEX. R. 5 (a); W.D. VA. R. 1; E.D. WASH. R. 1 (a); W.D. WASH. R. 2 (a); E.D. WIS. R. 1 A; and W.D. WISC. R. 1 (a).

6. It is interesting to note that the United States Court of Appeals for the Fifth Circuit has no provision for admission based upon state bar membership.

³⁸ U.S. SUP. CT. R. 5 § 1; D.C. CIR. R. 7 (a); 1ST CIR. R. 7 (1); 3RD CIR. R. 8 (1); 6TH CIR. R. 6 (1); 9TH CIR. R. 1.1; D. IDAHO R. 1 (a); D. MONT. R. 1 a; and D.P.R. R. 1 (b).

³⁹ 1. If admitted to practice in the Supreme Court of the United States—D.C. CIR. R. 7; 1ST CIR. R. 7 (1); 3RD CIR. R. 8 (1); 4TH CIR. R. 6 (1); 5TH CIR. R. 7 (1); 6TH CIR. R. 6 (1); 7TH CIR. R. 7 (1); 9TH CIR. R. 7.1; 10TH CIR. R. 7.1; D. IDAHO R. 1 (a); S.D. IND. R. 1 (b); D. MONT. R. 1 (a); D.N.M. R. 2 (a); D.N.D. R. II 2; N.D. OKLA. letter from Judge Barrow, 18 Sept. 1963; and E.D. PA., letter from Chief Judge Clary, 1 Oct. 1963.

2. If admitted to practice in any United States Court of Appeals—1ST CIR. R. 7 (1); 3RD CIR. R. 8 (1); 4TH CIR. R. 6 (1); 6TH CIR. R. 6 (1); 7TH CIR. R. 7 (1); 10TH CIR. R. 7.1; D. MONT. R. 1 a; D.N. D. R. II 2; N.D. OKLA., letter from Judge Barrow, 18 Sept. 1963.

3. Any United States District Court—1ST CIR. R. 7 (1); 4TH CIR. R. 6 (1); 5TH CIR. R. 7 (1); 6TH CIR. R. 6 (1); D.S.D. R. 1 § 1; and W.D. TEX. R. 2 (a).

4. A United States District Court within the Circuit—D.D.C. R. 7 (a); 3RD CIR. R. 8 (1); 9TH CIR. R. 7.1; and 10TH CIR. 7.1.

5. A particular United States District Court—3RD CIR. R. 8 (1); N.D. ILL. R. 6 (a).

6. Any United States Federal Court—2ND CIR. R. 6 (a); 8TH CIR. R. 6 (a); E.D.S.C. R. 2; and W.D.S.C. R. 2.

⁴⁰ See for example, U.S. SUP. CT. R. 5 (4), "Upon being admitted, each applicant shall take and subscribe the following oath or affirmation, *viz*: I, _____, do solemnly swear (or affirm) that I will demean myself, as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States."

The alien lawyer applicant, for a brief period (between 1949 and 1955), enjoyed far better and more enlightened treatment in Japan than he has received generally in the United States. Recognizing the need for legal advice on foreign law, the Lawyers Law of 1949, by article 7,⁴¹ made provision for the licensing of lawyers qualified to practice in a foreign country or countries, but who were not eligible for full-fledged membership in the Japanese bar, by creating two special categories of alien lawyers:

CLASS I was composed of those who were qualified as lawyers in a foreign country or countries, and who, in addition, had considerable knowledge of Japanese law; and

CLASS II was composed of those who were qualified as lawyers in a foreign country or countries.

Applicants under either class were required to be free from the same disqualifications prescribed for Japanese lawyers,⁴² and were required to have the approval of the Supreme Court of Japan. The Supreme Court was authorized to make its selection either through the device of, or without, a bar examination.

Alien attorneys admitted under either category were not required, as are lawyers, whether alien or national, admitted under regular procedures, to register with the Japanese Federation of Bar Associations.⁴³ However, the applicant was required to become a member of a local bar association of the area in which his office was located, and this membership automatically made him a member of the Federation.

The local bar association was permitted by the Lawyers Law, article 7, to make regulations for admission, but the application for membership submitted by an alien lawyer to a local bar association could not be denied unless it failed to comply with these regulations in form or procedure. Both local bar associations and the Federation were authorized to make regulations governing the conduct of alien lawyers who had become members of the local associations.⁴⁴

⁴¹ *Bengoshihō* (Law No. 205, 1949) in 2 EHS No. 2040.

⁴² Lawyers Law, art. 6. As, for example, conviction of crimes carrying specified punishment, dismissal from office, lawyers expelled by disciplinary action, persons declared incompetent or quasi-incompetent, and bankrupts not rehabilitated. See, for detail, Ohira & Stevens, *supra* note 3, at 24-25.

⁴³ Lawyers Law, arts. 8 and 9, and see Ohira & Stevens, *supra* note 3, at 24.

⁴⁴ A local bar association must get the approval of the Japan Federation of Bar Associations before its regulations become effective, and the Federation must report to the Japanese Supreme Court when it gives such approval or makes its own regulations of this kind.

Although alien lawyers were bound only by those regulations which were made for them and not by those made for regular members of the Japanese bar, certain sections of the Lawyers Law do apply to alien lawyers of both Class I and Class II.⁴⁵ Also, article 7 (5) of the Lawyers Law provided that the Japanese Supreme Court, where it deemed it necessary, might cancel its approval of any alien lawyer of either class.⁴⁶

⁴⁵ Thus arts. 1, mission of lawyers; 2, basic standards of lawyer's duties; 20 (3), prohibition against maintaining two or more law offices; 23, right and obligation to maintain secrecy; 23-2, right to request information; 24, obligation to do requested services; 25, cases which cannot be handled; 26, bribery; 27, prohibition against having business relations with non-lawyers; 28, prohibition against acquiring an interest in a dispute; and 29, obligation to inform upon refusal to take a case; are, together with the punitive articles, 76 and 77, applicable. No cases involving the discipline of alien lawyers have, as yet, arisen. For examples of conduct which has resulted in disciplinary action under these articles, see Ohira & Stevens, *supra* note 3, at 22. In addition, concerning article 26 of the Lawyers Law, see:

1. A practicing lawyer, Mr. Z. N., representing a lumber merchant, visited a forest owner and settled out of court a dispute between his client and the forest owner over lumber dealings. The condition of settlement called for payment by the forest owner to the lumber merchant of 500,000 yen by a day certain in the future. On the spot and just after the settlement was completed, Mr. Z. N. accepted 5,000 yen from the forest owner as travel fees for the day. Mr. Z. N. was charged with violation of article 26 of the Lawyers Law; he was convicted, and he appealed. He argued that since the case was settled before he accepted the travel fee, there was no possibility of impairment of his lawyer's function. The Supreme Court rejected this argument, stating that the matter was pending until the 500,000 yen were paid, that therefore there was the possibility of impairing fairness, and, in addition, even though there had not been, the receiving of travel fees from the other party constitutes a violation of article 26. 15 Saikō saibansho keiji hanreishū 1902 (Sup. Ct., Dec. 20, 1961).

2. X rented his land to Y, but later cancelled the contract and sued Y for possession of the land. While the case was pending, it was settled by conciliation (chōtei). By the terms of the conciliation X agreed to pay Y 100,000 yen, and to pay Mr. M., Y's attorney in the conciliation, 30,000 yen. Later Y contended that the conciliation was void because Mr. M. received money from X in violation of article 26 of the Lawyers Law. The Supreme Court held that this conciliation was not void for that reason. Yasui v. Yamamori, 10 Saikō saibansho minji hanreishū 1438 (Sup. Ct., Nov. 15, 1956).

Concerning art. 28, see:

1. A practicing lawyer, Mr. M. T., in the case of a foreclosure of a mortgage on real property pending in court, after being asked by the owner of the mortgaged property to arrange for the postponement of the auction, talked to the creditor, and then bought the claim from the creditor. He was convicted of violation of article 28, and appealed to the Supreme Court. The Supreme Court, in sustaining the conviction, held that the claim supported by a mortgage, of which foreclosure is pending, was a right in dispute under article 28. 16 Saikō saibansho keiji hanreishū 162 (Sup. Ct., Feb. 21, 1962).

2. X rented his land to Y, but later cancelled the contract on the ground that Y failed to pay rent regularly. While that case was pending in court, a practicing lawyer, Mr. K. M., who was representing X in the above suit, made a preliminary contract to buy the land from X. Y, in appealing to the Supreme Court, argued that Mr. K. M. was, by this contract, in violation of article 28 of the Lawyers Law and therefore his representation of X in court was void. The Supreme Court held to the contrary, stating that the alleged violation did not make Mr. K. M.'s legal activities before the court on behalf of X ineffective. Tanaka v. Urugami, 14 Saikō saibansho minji hanreishū 525 (Sup. Ct., March 22, 1960).

⁴⁶ Lawyers Law, article 7 (6), provides that the Supreme Court of Japan must request the Federation to give it a recommendation when the cancellation of the Court's

After the alien lawyer applicant received the approval of the Japanese Supreme Court and was admitted to membership in a local bar association, he was, and is, permitted to practice law:

1. *if a member of Class I*, in all Japanese courts, with respect to any matter, as fully as a regular member of the Japanese bar; but

2. *if a member of Class II*, his admission is restricted to those matters pertaining to the nationals of, or to the laws of, a specified country or countries, as designated by the Japanese Supreme Court at the time of the approval, and with respect to these matters he is permitted to practice before any court in Japan.⁴⁷

Although article 7 of the Lawyers Law was deleted in 1955,⁴⁸ the section remains effective, together with its punitive articles, with respect to those who had qualified for admission in either Class I or Class II prior to repeal. This permits the experiment to continue, but with no new blood. As of November 30, 1963, there were forty-five alien lawyers among the 6,800 lawyers in Japan. One of these is Japanese, admitted under Class I; thirty-six are Americans, one is British, three are German, and four are Chinese, all admitted under Class II.

The question has been raised from time to time of the effect, if any,

approval of an alien lawyer is before the Court. While there is no written standard setting forth the grounds for cancellation either in the law or in the regulations, it is assumed that cancellation would be in order:

1. if any of the conditions listed in article 6 of the Lawyers Law (see note 42 *supra*) is violated, since negative compliance with those conditions was a prerequisite for admission;

2. if an alien lawyer is disbarred in the country or one of the countries in which he was admitted and upon which admission to the bar his qualification for admission as an alien lawyer in Japan was based, since membership in that bar is a basic requirement for admission under this law in Japan;

3. where an alien lawyer violates the Lawyers Law; or a regulation of the bar association of which he is a member, or a regulation of the Japan Federation of Bar Associations, prescribed for alien lawyers; or is guilty of conduct which would warrant disciplinary action by a bar association or the Federation if done by a Japanese lawyer.

However, the possibility of cancellation is not limited to these suggestions, for the law clearly authorizes the cancellation of the privilege of the alien lawyer to practice in Japan where the Supreme Court deems it necessary.

It should be noted that the Japan Federation of Bar Associations may report violations of the Lawyers Law, or of regulations, or any other misconduct on the part of an alien lawyer to the Supreme Court, but the Federation has no disciplinary power, as such, over alien lawyers.

Finally, the alien lawyer may request cancellation of the Supreme Court's approval on his own volition.

⁴⁷ For an interesting discussion of these provisions by an American lawyer admitted under Class II, see Henderson, *supra* note 1, at 10-13.

⁴⁸ Law No. 155, dated August 10, 1955.

of the United States-Japan Treaty of Friendship, Commerce and Navigation, which was signed on April 2, 1953, on the right of a lawyer admitted in one of the treaty nations to practice in the other.⁴⁹ Article VIII, paragraph 2, of the treaty provides:

Nationals of either Party shall not be barred from practicing the professions within the territories of the other party merely by reason of their alienage; but they shall be permitted to engage in professional activities therein upon compliance with the requirements regarding qualifications, residence and competence that are applicable to nationals of such other Party.⁵⁰

Had the treaty been ratified in this form, the practice of law would have been covered and included. However, the United States Senate did advise and consent to the ratification subject to a reservation to the effect that article VIII, paragraph 2, would not apply to professions which were state licensed and were reserved by statute or constitution exclusively to citizens of the country.⁵¹ Japan accepted this reservation. Accordingly, it is quite clear that the states of the United States may make United States citizenship a requirement for admission to practice in state courts, but the reservation does not include the district courts of the District of Columbia, or United States territories or possessions. Is it not, therefore, equally clear that under this treaty⁵² a United States court cannot impose such a requirement on a Japanese lawyer applying for admission to the District of Columbia⁵³ or as an additional requirement for admission to a federal court in those instances where the state has made provision for the admission of aliens?⁵⁴ Did Japan concede the reservation of this power to United States courts in making its own reservation to the treaty (which the United States in turn accepted) following Japan's acceptance of the United States' reservation, which provides:

Japan reserves the right to impose prohibitions or restrictions on nationals of the United States of America with respect to practicing the professions referred to in Article VIII, paragraph 2, to the same extent

⁴⁹ See, for example, Henderson, *supra* note 1, at 15-16.

⁵⁰ U.S. STATE DEPT., 4 UNITED STATES TREATIES AND OTHER INTERNATIONAL AGREEMENTS 2065 at 2070 (1953).

⁵¹ *Id.* at 2132.

⁵² Which is the supreme law of the land, U.S. CONST., art. VI.

⁵³ See *quaere*, note 24 *supra*. And, what effect has this treaty on the admission of Japanese attorneys to practice in the District Court of the Territory of Guam, note 25 *supra*, or in the Supreme Court of Puerto Rico, note 26 *supra*?

⁵⁴ See *quaere* note 36 *supra*, and *quaere* the constitutionality of the text accompanying note 40 *supra*.

as States, Territories or possessions of the United States of America, including the District of Columbia, to which such nationals belong impose prohibitions or restrictions on nationals of Japan with respect to practicing such professions.⁵⁵

In spite of this reservation and prior to the repeal of article 7 of the Lawyers Law, Japan was more liberal in the admission or possible admission of alien lawyers than reciprocity with the vast majority of the states of the United States would require. With the repeal of article 7, the admission of aliens on the basis of their qualifications as attorneys admitted in a foreign jurisdiction is no longer possible. However, a nice question does remain as to whether, under the treaty and the language of the Japanese reservation, a member of the bar of either of the two states in the United States which do permit the admission of alien attorneys,⁵⁶ or of the two states that permit an alien to become a member of the bar on the same terms as any applicant,⁵⁷ has the right to apply for admission to the Japanese bar on the same terms and conditions as those imposed by his state admission rules. It would seem that such might be the case.

There is yet another clause in the Treaty of Friendship, Commerce and Navigation with Japan that deserves scrutiny. Article VIII, paragraph 1, provides:

1. Nationals and companies of either Party shall be permitted to engage, within the territories of the other Party, accountants and other technical experts, executive personnel, attorneys, agents and other specialists of their choice. Moreover, such nationals and companies shall be permitted to engage accountants and other technical experts regardless of the extent to which they may have qualified for the practice of a profession within the territories of such other Party, for the particular purpose of making examinations, audits and technical investigations exclusively for, and rendering reports to, such nationals and companies in connection with the planning and operation of their enterprises, and enterprises in which they have a financial interest, within such territories.⁵⁸

At first glance one might get the impression that by virtue of the second sentence of the above paragraph nationals and companies of either party could engage non-lawyers to do specific legal work within the territory of the other party. However, a more careful reading and

⁵⁵ U.S. STATE DEP'T., *op. cit. supra* note 50, at 2132.

⁵⁶ Maine and Tennessee; see notes 33, 34 *supra*.

⁵⁷ Tennessee and Virginia; see note 12 *supra*.

⁵⁸ U.S. STATE DEP'T., *op. cit. supra* note 50, at 2070.

comparison of the second sentence with the first, plus the fact that the United States' reservation applies only to the second paragraph of Article VIII, leads to the conclusion that attorneys were not contemplated in the second sentence.

Although attorneys were not contemplated, a practice in Japan which permits salaried employees who are not qualified lawyers to work on legal problems of the employer within the business, even though the work is of a kind that would normally be done by an attorney, presents yet another problem.⁵⁹ Legally trained individuals who either failed to, or made no effort to, gain admission to the Japanese bar are regularly employed by firms to fill such positions, and this custom is not considered to fall within the unauthorized practice of law in Japan.⁶⁰

Suppose a Japanese corporation, doing business in the United States, brought along some of its salaried, law trained, non-lawyer employees to take care of its own legal work. Would such persons, or the Japanese corporation, or both, be engaged in the unauthorized practice of law? This presents the question as to the extent to which a corporation, as a legal entity, is permitted, as is the individual, to handle its own legal affairs in the United States. It should be observed that in the United States today an increasing volume of the corporation's legal work, in contrast to the Japanese practice, is being done by "house counsel," that is, by members of the bar who work for the corporation on a fixed salary.⁶¹ This observation by implication indicates that a great deal of

⁵⁹ See Henderson, *The Roles of Lawyers in U.S.-Japanese Business Transactions*, 38 WASH. L. REV. 1, 4-5 (1963); and Woodruff, *The Japanese Lawyer*, 35 NEB. L. REV. 429 (1956).

⁶⁰ Lawyers Law, art. 72, provides: "No person other than a lawyer shall, with the aim of obtaining compensation, perform legal business such as presentation of legal opinion, representation, mediation or conciliation and the like in connection with law suits or non-contentious matters, and such appeal filed with the administration agencies as request for investigation, raise of objection, request for review against dispositions made thereby, and other general legal cases, or act as agent therefor: Provided that this shall not apply in such cases as otherwise provided for in this law." 2 EHS No. 2040. Under Japanese law, the executive of a corporation or any other person who is authorized by law to represent the corporation is also required to represent the corporation in court in both civil and criminal matters, even though he is a layman and as such unqualified to practice law. CODE OF CIVIL PROCEDURE, arts. 49 and 58, and CODE OF CRIMINAL PROCEDURE, art. 27. The layman executive is, however, permitted, if he so desires, to hire a qualified lawyer or lawyers to represent the corporation in court. Consequently, care should be exercised by the American reader not to take the basic statement in the text too literally. As in the United States, what corporate lay employees may or may not do depends upon the court's interpretation of the words "Practice of Law."

⁶¹ The Japanese lawyer rarely serves as house counsel. Before he could take such a position, he would have to obtain special permission to do so from his bar association. Lawyers Law, art. 30 (3), as amended in 1961. In contrast, in 1964 there are 26,492 salaried house counsel in the United States, approximately 9.6% of the total lawyer population, 9 A.B.A. News, No. 4 (15 April 1964). For a discussion of what corporation law departments do in the United States, see Hanaway, *Corporate Law Depart-*

corporate legal work is still being done either by non-lawyer employees or by outside attorneys.

To begin with, "it is the unanimous view of the decisions that a corporation has no right or power to either practice law or to hire lawyers to carry on the business of practicing law for it."⁶² With respect to its own affairs, a review of both case law and statutes makes it quite clear that there is a considerable divergence of views as to the extent to which a corporation may act on legal matters on the advice of lay employees without either the corporation or its employee running the risk of practicing law without a license. Conduct which would be quite proper in one state may well be illegal in another.⁶³ Inasmuch as the

ments—A New Look, 17 BUS. LAW. 595 (1962); O'Meara, *Organizational Structure, Operation, and Administration of a Large Corporate Law Department*, 17 BUS. LAW. 584 (1962); Grahame, *What is Expected of a Corporate Law Department?*, 49 A.B.A.J. 159 (1963); and CALIFORNIA SPECIALTY HANDBOOK NO. 5, FUNCTIONS OF CORPORATE LEGAL DEPARTMENTS (1961). See also, ABA, LAW PRACTICE IN A CORPORATE LAW DEPARTMENT (1964), prepared for law students by the A.B.A.'s section of Corporation Banking and Business Law.

⁶² FLETCHER, CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS (1950) 2524. See also, AMERICAN BAR FOUNDATION, UNAUTHORIZED PRACTICE SOURCE BOOK (1958) and UNAUTHORIZED PRACTICE STATUTE BOOK (1961).

⁶³ Compare *Tuttle v. Hi-Land Dairyman's Ass'n.*, 10 Utah2d 195, 350 P.2d 616, 618 (1960):

[A] corporation is not a natural person. It is an artificial entity created by law and as such it can neither practice law nor appear or act in person. Out of court it must act in its affairs through its agents and representatives and in matters in court it can act only through licensed attorneys. A corporation cannot appear in court by an officer who is not an attorney and it cannot appear in *propris persona* [*Paradise v. Nowlin*, 86 Cal. App.2d 897, 195 P.2d 867 (2d Dist. 1948), is the source of this quotation].

with *State ex rel. Daniel v. Wells*, 191 S.C. 468, 5 S.E.2d 181, 186 (1939), wherein a corporate employee was charged with unauthorized practice of law:

The law recognizes the right of natural persons to act for themselves in their own affairs, although the acts performed by them, if performed for others, would constitute the practice of law. A natural person may present his own case in court or elsewhere, although he is not a licensed lawyer. A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives. In legal matters, it must act, if at all, through licensed attorneys.... If a corporation could appear in court through a layman upon the theory that it was appearing for itself, it could employ any person, not learned in the law, to represent it in any or all judicial proceedings.

The court went on to hold that it did not think that acts of the defendant in investigating injuries, making reports thereon, and deciding whether a claim was compensable "would constitute the practice of law." See also, *Ark. Bar Ass'n. v. Union Nat. Bank*, 224 Ark. 48, 273 S.W.2d 408 (1954).

Compare *Title Guar. Co. v. Denver Bar Ass'n.*, 135 Colo. 423, 312 P.2d 1011 at 1014 (1957), "It is elementary that a layman or a corporation may prepare instruments to which he or it is a party without being guilty of the unauthorized practice of law"; *Carter v. Trevathan*, 309 S.W.2d 746 at 748 (Ky. 1958), "However, if one, who is not a lawyer, is an officer of a corporation or a member of a firm or partnership, not acting in a fiduciary capacity, he may under RCA 3.020 draw a legal instrument for or on behalf of the corporation, firm or partnership if it is a party to the instrument, provided he receives no remuneration for that particular service"; *State v. Pledger*, 257 N.C. 634, 127 S.E.2d 337 at 339 (1962), "A corporation can act only through its officers, agents and employees. A person who, in the course of his employment by a

foreign attorney, whether from a foreign nation or a sister state, is not entitled to practice law in a particular jurisdiction until admitted, the same rules should apply to the foreign attorney corporate employee as to the domestic lay employee. Accordingly, the Japanese or American firm employing legally trained non-members of the local bar in the United States must take care to check and comply with local rules and statutes.

Looking in the other direction, in view of the Japanese attitude, the American corporation doing business in Japan may, apparently, employ an American attorney and locate him in its Japanese office, at least so long as he does only that kind of legal work which is done by legally trained non-lawyers for Japanese firms.⁶⁴

This discussion leads to yet another possibility. Could the American firm use its American lawyer, not house counsel, to perform legal services for it in Japan? Would it make a difference whether the American lawyer resides in Japan or simply goes there for the purpose of handling a particular item of legal business, regardless of its complexity? Would it matter whether he was advising his client on American or Japanese law? It has been held in the United States that an alien lawyer, residing in the United States, who gives advice on the laws of the foreign country in which he is admitted, is engaged in the

corporation, prepares a legal document in connection with a business transaction in which the corporation has a primary interest, the corporation being authorized by law and its charter to transact such business, does not violate the statute, for his act in so doing is the act of the corporation in the furtherance of its own business"; *State Bar Ass'n. v. Conn. Bank & Trust Co.*, 145 Conn. 222, 140 A.2d 863 (1958), which held that employees, lawyer or layman, could apply laws to bank's business, unless the acts performed were such as are "commonly understood to be the practice of law"; and *N.J. State Bar Ass'n. v. N. N. J. Mortgage Ass'n.*, 22 N.J. 184, 123 A.2d 498 (1956), "Corporations may act for themselves through their own attorney-employees, but they cannot perform acts for others in this capacity which amounts to the practice of law..." See also, same parties, 34 N.J. 301, 169 A.2d 150 (1961).

In the area of statute law, contrast those statutes which in broad terms make it unlawful for a corporation to practice law, as for example: *ARK. STAT. § 25-205*; *HAWAII REV. LAWS, § 217-14*; *ILL. ANN. STAT. ch. 32, § 411*; *N.C. GEN. STAT. § 84-5*; with those statutes which add such words as "for any person other than itself": *GA. CODE ANN. § 9-402*; *MASS. GEN. LAWS ANN. ch. 221, § 46*; *MICH. COMP. LAWS § 450.681*; *MINN. STAT. § 481.02*. For a collection of statutes which limit the giving of legal advice and the preparation of legal instruments to licensed attorneys, see *AMERICAN BAR FOUNDATION, UNAUTHORIZED PRACTICE STATUTE BOOK 94* (1961). For a collection of cases on this subject, see Fletcher, *supra* note 62 at § 2524.1 and *AMERICAN BAR FOUNDATION, UNAUTHORIZED PRACTICE SOURCE BOOK* (1958). For law review comment see, 13 *VAND. L. REV.* 574 (1960); and Comment, *Attorney—Unauthorized Practice of Law by Corporations*, 41 *N.C. L. REV.* 225 (1963).

⁶⁴ See cautionary statement, note 60 *supra*. The non-lawyer who gives legal advice should give thought to two recent cases which have ruled that when a person undertakes to practice law without a license he is liable to persons injured by his negligence. *Biakanja v. Irving*, 49 Cal.2d 647, 320 P.2d 16 (1958) and *Mattieligh v. Poe*, 57 Wn.2d 203, 204-205, 356 P.2d 323, 329 (1960). See 11 *VAND. L. REV.* 599 (1958); 25 *MO. L. REV.* 202 (1960); 36 *WASH. L. REV.* 222 (1961).

unauthorized practice of law unless he has been admitted to the local bar.⁶⁵ There is no reason to think that Japan would reach a different conclusion. However, the use of alien counsel by either a Japanese or an American firm in the territory of the other for legal advice with respect to a particular case or occasion is not as easily resolved.

The practice of permitting a non-resident attorney to represent a client in a particular case of controversy requiring court action is widespread and well established in both state⁶⁶ and federal district courts⁶⁷ in the United States. Although the conditions and limitations placed on such appearances by some jurisdictions are interesting,⁶⁸ the concern

⁶⁵ *In re Roel*, 3 N.Y.2d 224, 144 N.E.2d 24 (1957), *appeal dismissed*, 355 U.S. 604 (1958). For a discussion of this case and the problem in general, see Note, 3 N.Y.L.F. 438, 440 (1952); Note, 9 SYRACUSE L. REV. 275 (1958); Comment, *Aliens Rights, the Public Interest, and the Practice of Foreign Law*, 10 STAN. L. REV. 777 (1958); Comment, *Interstate and International Practice of Law*, 31 SO. CAL. L. REV. 416 (1958); Note, 70 HARV. L. REV. 1112 (1957); and Note, 36 TEXAS L. REV. 356 (1957).

⁶⁶ See BRENNER, BAR EXAMINATIONS AND REQUIREMENTS FOR ADMISSION TO THE BAR 165 (1952). See also, AMERICAN BAR FOUNDATION, RESEARCH MEMORANDUM SERIES, No. 1 ADMISSION OF NONRESIDENT ATTORNEYS PRO HAC VICE IN STATE COURTS AND THE DISTRICT OF COLUMBIA (1958), which sets forth most of the state statutes and rules verbatim.

⁶⁷ See D. ALASKA R. 1, as amended, (c); D. ARIZ. R. 1 (b); W.D. ARK. R. 1 (d); E.D. ARK. R. 1; N.D. CAL. R. 1 (c); S.D. CAL., letter from Chief Judge Peirson M. Hall; D. COLO. R. 4 (d); D. CONN. R. 2 (e); D. DEL. R. 4 C; S.D. FLA. R. 16; M.D. FLA. R. 16; N.D. FLA. R. 12; M.D. GA., by custom only; N.D. GA. R. 1 (d); D. IDAHO, no specific rule because any member of the bar of any state or territory of the U.S. or of the U.S. Supreme Court may be admitted on motion; E.D. ILL. R. 1 (d); N.D. ILL. R. 6 (b); S.D. IND. R. 1 (c); S.D. IOWA R. 3 (Rule 3 in both of the Iowa District Courts add the requirement that the action be for personal injury); D. KAN. R. 3 (f); W.D. KY. R. 2 (b); E.D. LA. R. 1 (d); Md. R. 3; E.D. MICH. R. 1 (2); D. MINN. R. 1 and 2; S.D. MISS. R. 2; W.D. MO. R. 1 (f); E.D. MO. R. II h; D. MONT. R. 1 (c); D.N.J. R. 2 c; D.N. M. R. 2 (a) and 2 (c); S.D.N.Y. R. 3 (c); E.D.N.Y. R. 3 (c); N.D.N.Y. R. 2 (d); M.D.N.C. R. 1 C; W.D.N.C., no rule; D.N.D. R. II 4 (a) and (f); S.D. OHIO R. 4; W.D. OKLA., letter from Judge Barrow, 18 Sept. 1963, stated that, although there was no rule, the practice has been to allow out-of-state attorneys to appear in particular cases on motion; D. ORE. R. 4 (c); W.D. PA. R. 1 (c); E.D. PA., letter from Chief Judge Clary, 1 Oct. 1963 indicated that the practice was to permit admission of attorneys *pro hac vice*; D.P.R. R. 1 (c); E.D.S.C. R. 2; W.D.S.C. R. 2; D.S.D. R. 1; E.D. TENN. R. 2 (a); W.D. TEX. R. 2 (e); S.D. TEX. R. 6; E.D. VA. R. 9.5; W.D. VA. R. 3; E.D. WASH. R. 1 (c); W.D. WASH. R. 4; E.D. WIS. R. 1 C; W.D. WIS. R. 1 (c).

⁶⁸ As, for example: (a.) *the condition that local counsel be associated or designated, for service of papers, etc.*: D. ALASKA R. 1, as amended, (c); D. ARIZ. R. 1 (b); E.D. ARK. R. 1(j); W.D. ARK. R. 1(j); N.D. GA. R. 1 (d); E.D. ILL. R. 1 (c); S.D. IND. R. 1 (d); W.D. KY. R. 2 (c); E.D. LA. R. 1 (c); D. MD. R. 3; D. MINN. R. 5 (note particularly the very interesting last sentence); S.D. MISS. R. 2; W.D. MO. R. 1 (f); E.D. MO. R. II h; D. MONT. R. 1 (c); D. N.J. R. 2 c and 3; S.D. OHIO R. 4; E.D. PA., letter of Chief Judge Clary, 1 Oct. 1963; E.D. TENN. R. 2 (a); W.D. TEX. R. 4; E.D. WASH. R. 1 (f); W.D. WASH. R. 5 (which could well serve as a model); E.D. WIS. R. 1 D; and W.D. WIS. R. 1 (d); for states with such statutes or rules see: *Arizona*, R. 1; *District of Columbia, Local Civil Rules*, R. 4 (b); *Hawaii*, R. 15 (b); *Iowa*, IOWA CODE, vol. II, § 610.13 (1950); *Louisiana*, LA. REV. STAT., vol. 4, tit. 37, § 214 (1951); *Nebraska*, NEB. REV. STAT. § 7-103 (1962), but see R. II 5; *Nevada*, R. 41 (1), and see R. XXIII for cases on appeal; *Oregon*, ORE. REV. STAT. § 9-240; *South Dakota*, S.D. CT. R. § 32.1102; *Utah*, UTAH, CIV. P. R. 5 (b) (2); *Virginia*, VA. CODE § 54-42 and R. 1:6; *Wyoming*, R. 18, § 2-419.

b. Some or all of the following conditions: that local counsel be associated, sign all papers, or the first pleading, be counsel of record, have an office in the jurisdiction, personally appear, or the like are found in the following jurisdictions: D. COLO. R. 4 (d); D. DEL. R. 4 D; N.D. ILL. R. 6 (b) and 7; N.D. IOWA R. 3; S.D. IOWA R. 3; D. KAN. R. 3 (f); N.D.N.Y. R. 2 (d) and 3; S.D.N.Y. R. 3 (c) and 4; E.D.N.Y. R. 3 (c) and 4; M.D.N.C. R. 1 E; D.N.D. R. II 4 (b) and (g); W.D. PA. R. 1 (e) and (f); E.D.S.C. R. 2; W.D.S.C. R. 2; D.S.D. R. 1 § 3; E.D. VA. R. 9.5; W.D. VA. R. 3, 4 and 5; for states with such statutes or rules, see: *Alaska*, Bar Act, § 12, and R. 12; *Florida*, § 2, art. II of the Integration Rule of the Florida Bar as adopted by the Florida Supreme Court; *Guam*, R. 13 (1); *Idaho*, R. 116; *Kansas*, KAN. GEN. STAT. ANN § 7-104, and R. 33, 54; *Nevada*, R. XXIII, for cases on appeal; *New Hampshire*, R. 13; *New Jersey*, R. 1:12-3 (b), 1:12-8; *New Mexico*, N.M. STAT. ANN. § 18-1-26; *New York*, R. VII-4; *Ohio*, R. XIV, § 21; *Oklahoma*, OKLA. STAT. tit. 5, §§ 17.1, 17.2; *Rhode Island*, R.I. GEN. LAWS, ch. 612, § 42, cl. D and R. 8; *Texas*, R. X (i); *Vermont*, COUNTY CT. R. 1 (5); *Washington*, R. 7; *West Virginia*, By-Laws of the State Bar, art. II, § 7; *Wisconsin*, R. 2, § 4. For a collection of cases dealing with the "Validity, construction, and effect of statute or court rule requiring nonresident attorney to employ, or associate with himself, local counsel," see Annot., 45 A.L.R. 2d 1065 (1956). As to the validity of a state rule requiring a non-resident attorney, even though admitted to the local bar, to associate local counsel, see *Martin v. Walton*, 368 U. S. 25 (1961), and compare the Kansas approach under its Rules 41 and 54, with *Nevada*, R. 41 (2), and *Texas*, R. X (h). On the validity of local court rules requiring local office or counsel, see *Bastian v. Watkins*, 230 Md. 325, 187 A.2d 304 (1963); *Witte v. Fullerton*, 376 P.2d 244 (Okla. 1962); and *Letaw v. Smith*, 223 Ark. 638, 268 S.W.2d 3 (1954); and see a recent amendment to Rule 58, section 1, by the Supreme Court of Illinois (Jan. 16, 1963) which strikes down local rules requiring local office or counsel.

c. In some jurisdictions the court may waive the conditions: D. IDAHO R. 1 (d); D.N.M. R. 2 (c); D. ORE. R. 4 C.

d. Some jurisdictions have reciprocity provisions, granting, limiting or denying the privilege of appearance *pro hac vice* on the basis of the practice in the non-resident attorney's home jurisdiction: *Florida*, FLA. APP. CT. R. 2.3 b, and FLA. STAT. ANN. ch. 39, § 39.03; *Idaho*, R. 116; *Louisiana*, LA. REV. STAT. vol. 4 tit. 37, § 214 (a liberalizing, rather than restricting provision); *Massachusetts*, MASS. ANN. LAWS, ch. 222, § 46A; *Missouri*; R. 9.01; *Nebraska*, NEB. REV. STAT., § 7-103 (a liberalizing rather than a restricting provision); *Massachusetts*, MASS. STAT. ANN. ch. 221, § 46A; *Missouri*, R. 9.01; *Nebraska*, NEB. REV. STAT. § 7-103 (a liberalizing rather than restricting provision); *Oklahoma*, OKLA. STAT. tit. 5, § 17.2 (a liberalizing provision); *Oregon*, ORE. REV. STAT. § 9.240; *Utah*, R. VIII, § 8.2; *Virginia*, R. 1:6; *West Virginia*, W. VA. CODE ANN. § 2851, § 2. In a letter, 11 Sept. 1963, D. Del stated: "It is also the practice of this court, although it is not covered by our rules, to admit aliens, i.e., members of the bars of foreign countries *pro hac vice* if the foreign country extends like privilege to our bar." See also, E.D.S.C. R. 2; W.D.S.C. R. 2.

e. The rules of many jurisdictions contain no local counsel requirements: N.D. CAL. R. 1 (c); D. CONN. R. 2 (e); S.D. FLA. R. 16; M.D. FLA. R. 16; N.D. FLA. R. 12; E.D. MICH. R. 1 (2); D.P.R. R. 1 (c); S.D. TEX. R. 6. States with no local counsel requirement: *Alabama*, Rules Governing Admission of Non-Resident Attorneys *Pro Hac Vice*; *Arkansas*, ARK. STAT. ANN. § 25-108 (1962), and see *Letaw v. Smith* 223 Ark. 638, 268 S.W.2d 3 (1954) holding a local court requirement that local counsel must be associated to be unreasonable; *Colorado*, COLO. REV. STAT. § 12-1-18 (1953); *Delaware*, R. 31 (4); *Georgia*, GA. CODE ANN. § 24-3601; *Illinois*, R. 58, § VII; *Indiana*, R. 3-2; *Kentucky*, KY. REV. STAT. ANN. § 30.090; *Maine*, ME. REV. STAT., vol. 3, ch. 105, § 2; *Maryland*, MD. CODE ANN., art. 10, § 7 (1957); *Massachusetts*, MASS. ANN. LAWS, ch. 222, § 46 A; *Michigan*, MICH. STAT. ANN., § 27.69 (1961); *Minnesota*, MINN. STAT. § 481.02 (6) (1958), but see, *Barnes v. Verry*, 154 Minn. 252, 191 N.W. 589 (1923) which reaffirmed an earlier decision holding that nonresident counsel cannot commence an action without associating local counsel in the suit; *Mississippi*, MISS. CODE ANN. tit. 32, ch. 2, § 8666 (1956); *Missouri*, Mo. REV. STAT. § 484.100 and R. 9.01; *Montana*, MONT. REV. CODE, § 93-2001; *North Dakota*, N.D. REV. CODE, § 27-1127 (1960); *Pennsylvania*, R. 12 C, but see *In re Byrne*, 17 Pa. Dist. 427 (1908), which held that local counsel must be associated; *Puerto Rico*, R. 8 (d); *South Carolina*, S.C. CODE, § 56-125; *Tennessee*, R. 36 but see R. 8, last sentence of first paragraph.

f. The non-resident attorney in some jurisdictions is not permitted to recover

of this paper is the extent to which such rules or statutes permit or prohibit the appearance of alien attorneys *pro hac vice*.

An examination of the statutes and rules governing the appearance of non-resident attorneys *pro hac vice* reveals the following:

First: The United States Supreme Court and eight state courts have specific provisions authorizing the appearance of alien attorneys *pro hac vice*.⁶⁹

Second: There is nothing in the statutes or rules of eighteen states, the District of Columbia, or of thirteen of the United States District Courts whose rules were examined which would prevent the admission of an alien attorney *pro hac vice*, if the court were inclined to do so.⁷⁰

statutory attorney's fees: *Montana*, MONT. REV. CODE, § 93-2023, and see *Vaill v. No. Pac. Ry. Co.*, 66 Mont. 301 at 304, 213 Pac. 446, at 447 (1923); *Virginia*, VA. CODE, § 54-42.

g. House counsel. Judge Carl A. Weinman, of the U. S. Dist. Court for the Southern District of Ohio, in a letter, 17 Sept. 1963, states: "I also follow the rule used in the District Court of Western Pennsylvania in which I refuse to allow house counsel to be admitted to practice in any case regardless of whether that counsel resides in or outside of my district. I have consented, however, to allow house counsel to sit with regular counsel at the trial table but he must not take any part in the trial of the case."

h. Number of appearances *pro hac vice* per year limited: D.N.J. R. 2 c (3 civil actions per year by the attorney or his law firm).

⁶⁹ U.S. SUP. CT. R. 6. Admission of Foreign Counsel: "An attorney, barrister, or advocate who is qualified to practice in the courts of any foreign state may be specially admitted to the bar of this court for purposes limited to a particular case. He shall not, however, be authorized to act as attorney of record. In the case of such applicants, the oath shall not be required and there shall be no fee. Such admissions shall be only on motion of a member of the bar of this court, notice of which signed by such member and reciting all relevant facts shall be filed with the clerk at least three days prior to the motion."; for an example of this rule in operation see *Dennis v. United States*, 340 U.S. 887 (1950); *Hawaii*, R. 15 (b); *Illinois*, R. 58, § VII; *Maine*, ME. REV. STAT., vol. 3, ch. 105, § 2; *Montana*, MONT. REV. CODE, § 93-2001; *New York*, R. VII-4; *Oregon*, ORE. REV. STAT. § 9-240 (and note the limiting reciprocity provision); *Virginia*, for a special provision with respect to persons connected with any foreign embassy or legation, VA. CODE, § 54-67 (1959); *West Virginia*, By-Laws of State Bar, art. II, § 7. Not a single United States District Court among the fifty whose rules were examined made provision, specifically, for the admission of alien attorneys *pro hac vice*.

⁷⁰ *Alabama*, Rules Governing Admission of Non-Resident Attorneys Pro Hac Vice; *Delaware*, R. 31 (4); *District of Columbia*, LOCAL CIV. RULES, R. 4 (b); *Idaho*, R. 116; *Kentucky*, KY. REV. STAT. ANN., § 30.090; *Missouri*, MO. REV. STAT., § 484.100 and R. 9.01; *Nevada*, R. 41 (1), and R. XXIII; *New Hampshire*, R. 13; *New Jersey*, R. 1:12-8; *New Mexico*, N.M. STAT. ANN. § 18-1-26; *Ohio*, R. XIV, § 21; *Pennsylvania*, R. 12 C; *Tennessee*, R. 36; *Texas*, R. X (i); *Utah*, R. VIII, § 8-2, and Civ. P. R. 5 (b) (2); *Vermont*, COUNTY CT. R. 1 (5); *Virginia*, R. 1:6, but see VA. CODE § 54-42; *West Virginia*, W. VA. CODE ANN. para. 2851, § 2, R. 1 relating to Non-Resident Attorneys, and By-Laws of the State Bar, art. II § 7; *Wisconsin*, R. 2, § 4. D. CONN. R. 2 (e); D. DEL. R. 4 C and Chief Judge Caleb M. Wright stated in a letter, 11 Sept. 1963, "It is also the practice of this court, although it is not covered by our rules, to admit aliens, i.e., members of the bars of foreign countries *pro hac vice* if the foreign country extends like privilege to our bar."; N.D. IOWA R. 3; S.D. IOWA R. 3 (limited to personal injury cases); D. MD. R. 3 (limited to criminal cases and creditor's meetings in bankruptcy), Judge Roszel C. Thomsen, in a letter, 9 Sept. 1963, stated concerning aliens, "[i]f the provisions of Rule 3 were complied with, I do not know of any reason why we would not permit

Third: Admission of non-resident attorneys *pro hac vice* is specifically limited to members in good standing of the bar of a state, the District of Columbia, a territory or the district court of the United States in twenty-four states, Guam, Puerto Rico, and thirty-eight of the United States District Courts whose rules were examined.⁷¹ Such

it"; W.D. Mo. R. 1 (f) and letter, 10 Sept. 1963, from Judge Floyd R. Gibson stating, concerning aliens, "I would think they would be accorded the same privilege to appear in an isolated case along with local counsel, provided they were in good standing in their country of practice."; D. MONT. R. 1 (c); D.N.M. R. 2 (c); S.D. OHIO R. 4, but see letter, 17 Sept. 1963, from Chief Judge Carl A. Weinman, "We have never had occasion to admit a non-resident alien who is a member of the Bar of some other country. I would not favor his admission."; E.D. TENN. R. 2 (a) and letter from Judge Robert L. Taylor, 10 Sept. 1963, "We have had no cases where aliens sought to practice in this court, but I believe that Rule 2 (a) would provide the procedure for appearance and practice in our Court."; W.D. TEX. R. 2 (e); S.D. TEX. R. 6; W.D. VA. R. 3.

⁷¹ *Alaska*, R. 12; *Arizona*, R. 1; *Arkansas*, ARK. STAT. ANN. § 25-108 (1962), § 108; *Colorado*, COLO. REV. STAT., § 12-1-18 (1953); *Florida*, FLA. STAT. ANN. § 454.03 (1952), FLA. APP. CT. R. 2.3 b, and INTEGRATION RULES AND BY-LAWS OF THE FLORIDA BAR, art. II, § 2 (SUP. CT. 1955); *Georgia*, GA. CODE ANN. § 24-3601 (1959), and R. 2 (a); *Guam*, R. 13 (1); *Indiana*, R. 3-2; *Iowa*, IOWA CODE, § 610.13 (1950); *Kansas*, KAN. GEN. LAWS, § 7-104, and R. 33, 54; *Louisiana*, LA. REV. STAT. vol. 4, tit. 37, § 214 (1957); *Maryland*, MD. CODE ANN., vol. 1, art. 10, § 7 (1957); *Massachusetts*, MASS. ANN. LAWS, ch. 221, § 46 A (1955); *Michigan*, § 27 A. 916, Rev. Judicature Act (1961); *Minnesota*, MINN. STAT. § 481.02 (6) (1958); *Mississippi*, MISS. CODE ANN., tit. 32, ch. 2, § 8666 (2) (1956); *Nebraska*, NEB. REV. STAT. § 7-103 (1962) and R. II 5; *North Dakota*, N.D. REV. CODE, § 27-1127 (1960); *Oklahoma*, OKLA. REV. STAT. tit. 5, § 17 (1951); *Puerto Rico*, R. 8 (d); *Rhode Island*, R.I. GEN. LAWS, § 11-27-12 (1957) and R. 8; *South Carolina*, S.C. CODE, § 56-125 and R. 11; *South Dakota*, S.D. CODE, § 32.1102 (1939); *Virginia*, VA. CODE, § 54-42 (1959), but see § 54-67, and R. 1:6; *Washington*, REV. CODE, WASH., 248.170 (1961) and R. 7; and *Wyoming*, WYO. COMP. STAT. ANN. § 2-110 (1959) and R. 18, § 2-419. *The U.S. District Courts:* D. ALASKA R. 1, amended (c); D. ARIZ. R. 1 (b); W.D. ARK. R. 1 (d); E.D. ARK. R. 1; N.D. CAL. R. 1 (c); S.D. CAL., letter, Chief Judge Peirson M. Hall; D. COLO. R. 4 (d); S.D. FLA. R. 16; M.D. FLA. R. 16; N.D. FLA. R. 12; N.D. GA. R. 1 (d), but Judge Frank A. Hooper, in a letter, 11 Sept. 1963, in answer to a question about the admission of an alien attorney, stated, "I would grant the request provided he had associated a resident attorney pursuant to Local Rules."; E.D. ILL. R. 1 (d); N.D. ILL. R. 6 (b); S.D. IND. R. 1 (c), and see letter from Judge William E. Steckler, 24 Sept. 1963, "In respect to aliens who are members of the bar of their native countries, I would say that if they were admitted to practice before the Supreme Court of the United States or before the highest court of any state, that upon recommendation of a member of the bar of this court they would be admitted to practice before the court in a specific action but not for all purposes."; D. KAN. R. 3 (f); W.D. KY. R. 2 (b); E.D. LA. R. 1 (d); E.D. MICH. R. 1 (2); D. MINN. R. 1, 2; S.D. MISS. R. 2; E.D. MO. R. II h; D.N.J. R. 2 C; S.D.N.Y. R. 3 (c); E.D.N.Y. R. 3 (c); N.D.N.Y. R. 2 (d); M.D.N.C. R. 1 C; D.N.D. R. II 4 (a) and (b); D. ORE. R. 4 (c); W.D. PA. R. 1 (c); E.D. PA., letter from Chief Judge Thomas J. Clary, 1 Oct. 1963; D.P.R. R. 1 (c); E.D.S.C. R. 2; W.D.S.C. R. 2; E.D. VA. R. 9.5, but see letter from Judge Walter E. Hoffman, 30 Sept. 1963, "While we have no specific rule relating to aliens who are members of a bar of another nation, it is my view that any judge would, in his discretion, permit an alien member of the bar of another nation to be treated in the same light as a non-resident attorney."; E.D. WASH. R. 1 (c), but see letter from Judge Charles L. Powell, 6 Sept. 1963, "[i]n Rule 1 (c) we probably should have included aliens who are members of the bar of their native country and who are in good standing."; W.D. WASH. R. 4; E.D. WIS. R. 1 C, but see letter, 24 Sept. 1963, from the Clerk of Court, "However, I believe the court would permit [alien lawyers] to appear if they are not permanent residents of Wisconsin."; and W.D. WIS. R. 1 (c).

a provision would almost certainly be construed in such a way as to constitute a barrier to the admission of the alien attorney *pro hac vice*, unless he had qualified for admission in one of the states indicated in the text above,⁷² or unless the rule was construed as applying only to non-resident, native United States attorneys.⁷³

Fourth: There is, apparently, no statute or rule governing admission *pro hac vice* in any of the Courts of Appeals of the eleven United States Circuits,⁷⁴ in the courts of three states,⁷⁵ and in some five of the United States District Courts whose rules were examined.⁷⁶

The experience of the courts which have permitted the admission of alien attorneys *pro hac vice* indicates no difficulties with the practice. Affirmatively, this procedural device has made available to courts and parties in appropriate cases the knowledge, skill, and ability of an alien attorney. Its wider adoption is recommended. By way of contrast and

⁷² Maine, Tennessee, or Virginia.

⁷³ In this regard, note the comments by a number of the judges in note 71 *supra*.

⁷⁴ This may result from the belief that admission *pro hac vice* is unnecessary in the circuit courts because the grounds for admission to practice before them are broad enough to cover all lawyers practicing in the United States. Such is indeed the case insofar as members of the bar who are United States citizens are concerned. For rules, see: D.C. CIR. R. 7; 1ST CIR. R. 7; 2ND CIR. R. 6; 3RD CIR. R. 8; 4TH CIR. R. 6; 5TH CIR. R. 7; 6TH CIR. R. 6; 7TH CIR. R. 7; 8TH CIR. R. 6; 9TH CIR. R. 7; 10TH CIR. R. 7. For details, see notes 36-39 *supra*. But these same rules by virtue of the United States citizenship requirement in D.C. CIR. R. 7 (a) and 8TH CIR. R. 6 (a), and by virtue of the oath requirement to support the Constitution of the United States which appears in each of the above rules, raise an insurmountable barrier to admission to the alien lawyer who may have been admitted in the states listed in note 72 *supra* as well as to the alien lawyer who would like to appear in a particular case.

⁷⁵ *California*, but see *Ex parte McCue*, 211 Cal. 57, 293 Pac. 47 at 51-52 (1930), holding, "It is common practice, and one sustained by general usage in all of the states of this Union, we believe, to permit upon request an attorney holding a license to practice law from one state to appear in the courts of a sister state and there take part in the trial of an action pending in said courts."; *Connecticut*; and *North Carolina*, but see *Manning v. Roanoke & T. R. R. Co.*, 122 N.C. 824, 28 S.E. 963 at 964 (1898) wherein the court recognizes the custom of permitting non-resident counsel to appear as a matter of courtesy in a particular case.

⁷⁶ M.D. GA., Judge W. A. Bootle, in a letter, 12 Sept. 1963, stated "we do not have any local rules in this district even relating to resident attorneys, much less aliens."; note that D. IDAHO R. 1 (a) covering eligibility for admission of attorneys is very broad; nevertheless, it is not broad enough to cover alien attorneys from foreign countries; W.D.N.C.; N.D. OKLA., Judge Allen E. Barrow, in a letter, 18 Sept. 1963 writes: "Second, our Rules do not cover the appearance of attorneys who are not members of our state bar to practice in the Court for a particular case. However, where a motion is made to appear in a particular case, it has been the practice to allow their appearance, but they must be non-residents of our district and members of the bar in their resident state. Likewise, our Rules do not cover resident, and/or non-resident, aliens who are members of the bar of their native countries and we have never had any requests."; note that D.S.D. R. 1 covering admission of lawyers is quite broad, but not broad enough to include alien attorneys from foreign countries.

comparison, Japan has no provision for the appearance of attorneys *pro hac vice*.⁷⁷

In spite of the present restrictions on the admission of aliens and alien attorneys to the practice of law in both Japan and the United States, the very fact that the issue of admission of aliens has been faced is encouraging.⁷⁸ With this background the growing awareness of the need for readily available legal advice on problems involving foreign law and the developing civilized maturity in outlook with respect to dealings with peoples of other lands will not encounter the stubborn opposition so normal to a new idea.⁷⁹ The practices and experiments, whether still continuing or abandoned, discussed in this paper are examples of those first short but essential steps which will lead in time to a solution of the problem. In the immediate future, hopefully, rules will be promulgated which will permit an alien lawyer to appear *pro hac vice* on the same terms as the native, non-resident attorney, and, in addition, will permit the licensing, and therefore the constant availabil-

⁷⁷ The reason for this is obvious. The Japanese lawyer is admitted to and may practice in any court in Japan. See note 20 *supra*. However, it overlooks, as do a majority of U.S. jurisdictions, the value, and fairness to clients, of a device which will permit the alien attorney to appear in an appropriate case.

There are a number of situations in which the alien lawyer might appear in a Japanese court, not by virtue of the fact that he is a lawyer, but because the law permits a party to speak for him through a person of his choice, even though such person is not legally trained. For example, art. 31 of the *Japanese Code of Criminal Procedure* in the second paragraph, provides that in an action before a summary court, a family court, or a district court the accused, with the permission of the court, may select as defense counsel a person who is not admitted to the bar, and the language is broad enough to include foreigners. In district court, there must also be a defense counsel who is a member of the bar. In civil cases, representation of parties is limited to members of the bar except before summary courts. In summary courts, the party may select a non-lawyer to represent him with the permission of the court. CODE OF CIVIL PROCEDURE art. 79 (1).

In addition to these examples, Japan has a practice which permits parties or their representatives to appear before the court in civil cases with an assistant or assistants provided the court gives its permission. CODE OF CIVIL PROCEDURE art. 88 (1), (2). Under these provisions the foreign lawyer might well be permitted to participate in a case before one of these courts. However, in criminal cases, the assistant is limited to the accused's legal representative (such as parent of a minor, or guardian of an insane person), curator, spouse, lineal relative, brother, or sister. CODE OF CRIMINAL PROCEDURE art. 42. Under this provision, there is little opportunity for the appearance by the foreign lawyer not admitted in Japan.

For a collection of statutes providing for limited practice of law by laymen or lay agencies in the United States, see AMERICAN BAR FOUNDATION, UNAUTHORIZED PRACTICE STATUTE BOOK, 113-130 (1961).

⁷⁸ For an example of the same problem elsewhere, see Sutton, *Admission of an Alien as a Barrister*, 31 N.Z.L.J. 103 (1955); *Alien's Application for Admission as Barrister*, 31 N.Z.L.J. 289 (1955).

⁷⁹ Another method of providing clients with required legal talent in the laws of sister states and foreign countries is the law partnership composed of members of the bar of different states and nations. This approach, while not free of difficulties, has possibilities. See Canon 33 of the Canons of Professional Ethics and DRINKER, *LEGAL ETHICS*, 205 (1953).

ity, of properly qualified members of the bar of foreign countries, for either the general or a more limited practice of law, as their qualifications dictate.

One question remains to be answered. Will the Bench and Bar assume the leadership in drafting and promulgating the needed rules, or will we wait until our clients force a solution upon us?⁸⁰

⁸⁰ See, for example, *Brotherhood of Ry. Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1 (1964).